REMARKS

Rejections Relying on 35 U.S.C. § 102(e)

Applicant notes that references used in support of the rejections rely on 35 U.S.C. § 102(e) through 35 U.S.C. § 103(a). In responding to the rejections, Applicant does not admit that the references are prior art and Applicant specifically reserves the right to swear behind these references at a future date. However, Applicant contends that the claims are patentably distinct from the cited references.

Claim Rejections Under 35 U.S.C. § 103

Claims 1, 5, 12 and 18

Claims 1, 5, 12 and 18 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Burgan et al. (U.S. Patent No. 6,675,022) in view of Garceran et al.(U.S. Patent No. 6,522,888). Applicant respectfully traverses.

Claims 1 and 5

The Office Action states, "Burgan teaches . . . in response to identifying each of the detected wireless network devices that match the selection criteria, associating the at least one signal quality with its respective wireless network device for each wireless network device that matches the selection criteria (col. 17 line 40 through col. 18 line 8) . . . ." Office Action, page 1, last paragraph through page 2, first paragraph. Applicant contends that the only criteria used to associate a signal quality with a broadcast transmission site of Burgan et al. is a broadcast address, which is not associated with selection of a device, but selection of information. *See, e.g.*, Burgan et al., column 8, lines 36-41 and Figure 4, and column 17, line 56 through column 8, line 8. In other words, the communication device of Burgan et al. receives transmissions from one or more broadcast transmission sites, determines if the transmissions are meant for that communication device by looking to the broadcast address, and chooses the signal having the higher signal quality if the broadcast address is a match.

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The Office Action admits that Burgan et al. does not show querying for supplemental information from each of the detected wireless network devices and identifying each of the detected wireless network devices that match a selection criteria using the supplemental information. Office Action, page 2, first full paragraph. The Office Action then relies on Garceran et al. for this admittedly missing element. The Office Action states, "In the same field of endeavor, Garceran teaches querying for supplemental information from each of the detected wireless network devices (col. 3 lines 15-25 and col. 8 lines 57-61); and identifying each of the detected wireless network devices that match a selection criteria using the supplemental information (col. 3 lines 6-25)." Office Action, page 2, second full paragraph. However, Applicant contends that the combination still fails to teach or suggest the elements of Applicant's claims.

While Applicant acknowledges that Garceran et al. stores signal quality information for wireless devices, and stores supplemental information associated with that signal quality information, Applicant contends that Garceran et al. does not purport to identify detected devices that match any selection criteria. Instead, Garceran et al. collects data from all devices in communication with its base stations and determines coverage areas of those base stations from historical information over time. *See, e.g.,* Garceran et al., column 12, lines 12-28. Thus, Garceran et al. requests supplemental information from its wireless units and stores that supplemental information along with signal quality information without regard to any selection criteria based on that supplemental information. The request for supplemental information is made at Garceran et al.'s base stations and directed to its wireless units.

Even if combination of Burgan et al. and Garceran et al. were proper, which Applicant denies, the combination would fail to teach, suggest or imply each and every element of Applicant's claim. In particular, because Garceran et al. associates signal quality with supplemental information for all devices in communication with its base stations, and because Burgan et al. associates signal quality for each transmission matching a broadcast address, there can be no teaching, suggestion or implication that the combination of Burgan et al. in view of Garceran et al. would associate signal quality in response to identifying each of the detected wireless network devices that match a selection criteria.

In a second instance, there is no reasoned statement as to how the method of Burgan et al. could even be modified to use the location information in Garceran et al. The Office Action asserts that the combination would "provide the wireless communications system determines and/or receives location information for the wireless unit along with other information associated with the location information." Office Action, page 2, third full paragraph. However, the method of Burgan et al. does not utilize location information of its communication devices and does not purport to be concerned where its communication device are located as the communication device simply selects the signal that has the best signal quality regardless of where its transmission originated. Thus, Applicant contends there is no benefit to Burgan et al. to determine or receive location information from its communication devices, and no logical basis to modify Burgan et al. to make use of such information.

In addition, the Office Action, as noted above, has asserted that Burgan et al. teaches, in response to identifying each of the detected wireless network devices that match the selection criteria, associating the at least one signal quality with its respective wireless network device for each wireless network device that matches the selection criteria. However, the only use of information relating to a device to associate signal quality with that device is the broadcast address being transmitted by a base transmission site. Thus, if Burgan et al. were modified by Garceran et al. to query for supplemental information, the query would have to be directed to the base transmission sites as the method of Burgan et al. is selecting a signal from a base transmission site. Thus, the stated purpose for the combination would not be met as the wireless communication system would not determine or receive location information for its communication devices. Furthermore, there is no reasoned statement as to how or why the communication devices of Burgan et al. would use location information of the base transmission sites as there is no other basis provided in Burgan et al. for selecting a transmission other than it contains information having a broadcast address matching a broadcast address of the receiving communication device, and it has the best signal quality. As such, there can be no *prima facie* case of obviousness as the purpose of the combination is not satisfied and the combination results in no purported benefit to the modified reference.

Furthermore, Burgan et al. would be unsuited for its intended purpose if the communication devices were to be required to query for location information as the basis for its

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selection. The method of Burgan et al. is intended to provide localized information to a communication device that is located in a wide area communication system. Burgan et al., column 3, lines 36-39. The information is not intended to be individualized, but is intended for broadcast to many devices simultaneously. Burgan et al., column 4, lines 1-3 ("permits resource efficient distribution of localized information by broadcasting such information to all communication devices in a particular local coverage area"). Thus, requiring the communication devices of Burgan et al. to query the base transmission sites for location information in order to select a base transmission site from which to receive localized information would run counter to the efficient distribution of localized information through a simple broadcast. Instead, the base transmission sites would now have to establish communications individually with each communication device receiving its broadcasts before a communication device could select the localized information. Furthermore, because the signal quality is indicative of the relative location of the base transmission site to the communication device, it would be redundant to further query the base transmission site for location information. Finally, the communication device would also have to know its own location in order to make a selection on that basis.

In view of the foregoing, Applicant contends that the primary reference of Burgan et al. and the secondary reference of Garceran et al., taken either alone or in combination, fail to teach, suggest or imply each and every element of Applicant's claim 1. As claim 5 includes all patentable limitations of claim 1, this claim is also believed to be allowable. Applicant thus respectfully requests reconsideration and withdrawal of the rejection under 35 U.S.C. § 103(a), and allowance of claims 1 and 5.

Claim 12

The Office Action that Burgan et al. teaches "detecting a wireless network device, wherein the wireless network device transmits a signal having a signal quality" and "associating the signal quality with the wireless network device in response to determining that it is of the desired type and it has the desired status." Office Action, page 3, first full paragraph. The Office Action admits that Burgan et al. does not show querying the wireless network device to determine whether it is of a desired type and querying the wireless network device to determine whether it has a desired status. Office Action, page 3, second full paragraph. The Office Action

then relies on Garceran et al. to cure this admitted deficiency. Office Action, page 3, last paragraph.

The Office Action's assertion regarding Burgan et al. results in the base transmission sites of Burgan et al. corresponding to Applicant's wireless network device. As such, the combination of Burgan et al. and Garceran et al. must teach that the query is to the base transmission site to determine whether it is of a desired type and whether it has a desired status.

Garceran et al.'s query of its wireless units may determine mobile type and operating conditions, but there is no indication or implication that Garceran et al. is querying to determine whether the wireless unit is of a specific type or has a specific status. It may simply gather the type and status of each of its wireless units for historical purposes. As such, the combination of Burgan et al. and Garceran et al. cannot teach, suggest or imply querying to determine whether a wireless network device is of a desired type and has a desired status as neither reference, nor the combination, addresses associating a signal quality with a network device on the basis of determining that it has any specific device type or status.

In a second instance, there is no reasoned statement as to how the method of Burgan et al. would be modified to make use of determining whether its base transmission sites have a desired device type or desired status, and to associate the signal quality with the base transmission site in response to determining that it is of the desired type and it has the desired status. In particular, there is no other basis provided in Burgan et al. for selecting a transmission other than it contains information having a broadcast address matching a broadcast address of the receiving communication device, and it has the best signal quality. As such, the communication devices of Burgan et al. receive no benefit from knowing what type of device the base transmission site might be or what its status might be. The mere fact that the query could be made provides no basis for rejection as it serves no purpose. Thus, there can be no *prima facie* case of obviousness as the combination results in no purported benefit to the modified reference

Furthermore, there is no reasoned statement as to how or why the communication devices of Burgan et al. would use device type or status of the base transmission sites. The Office Action asserts that the combination would "provide the wireless communications system determines and/or receives location information for the wireless unit along with other information associated with the location information." Office Action, page 4, first paragraph. However, Garceran et al.

is combined to show querying the wireless network device to determine whether it is of a desired type and has a desired status. Office Action, page 3, last paragraph. Whether the combination would provide that the wireless communication system could determine and/or receive location information for a wireless unit along with information associated with the location information is irrelevant to the elements of claim 12. As such, there can be no *prima facie* case of obviousness as the purpose of the combination is not satisfied because querying for device type and device status provides no location information.

In view of the foregoing, Applicant contends that the primary reference of Burgan et al. and the secondary reference of Garceran et al., taken either alone or in combination, fail to teach, suggest or imply each and every element of Applicant's claim 12. Applicant thus respectfully requests reconsideration and withdrawal of the rejection under 35 U.S.C. § 103(a), and allowance of claim 12.

Claim 18

Claim 18 recites, in part, "querying for supplemental information from each wireless network device associated with a received signal," "comparing the supplemental information with a selection criteria to determine whether any wireless network device matches the selection criteria" and "if a wireless network device matches the selection criteria, associating that wireless network device and its supplemental information with its at least one signal quality." For reasoning as presented with respect to claim 1, Applicant contends that claim 18 is patentably distinct from the cited references, taken either alone or in combination. Applicant thus respectfully requests reconsideration and withdrawal of the rejection under 35 U.S.C. § 103(a), and allowance of claim 18.

Claims 2-4, 6, 8-11, 15-17 and 19

Claims 2-4, 6, 8-11, 15-17 and 19 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Burgan et al. in view of Garceran et al. and further in view of Olkkonen et al. (U.S. Patent No. 6,842,460). Applicant respectfully traverses.

Applicant contends that it has shown claims 1, 12 and 18 to be patentably distinct from the primary reference of Burgan et al. and the secondary reference of Garceran et al., taken either

alone or in combination. The tertiary reference of Olkkonen et al. is not asserted to overcome the noted deficiencies of the primary and secondary references with respect to claims 1, 12 and 18, and Applicant contends that it cannot do so. Accordingly, Applicant contends that claims 1, 12 and 18 are patentably distinct from the cited references, taken either alone or in combination. As claims 2-4, 6 and 8-11 include all patentable limitations of claim 1, claims 15-17 include all patentable limitations of claim 12, and claim 19 includes all patentable limitations of claim 18, these claims are also believed to be allowable. Applicant thus respectfully requests reconsideration and withdrawal of the rejection under 35 U.S.C. § 103(a), and allowance of claims 2-4, 6, 8-11, 15-17 and 19.

Claim 7

Claim 7 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Burgan et al. in view of Garceran et al. and further in view of Terlep et al. (U.S. Patent No. 5,796,777). Applicant respectfully traverses.

Applicant contends that it has shown claim 1 to be patentably distinct from the primary reference of Burgan et al. and the secondary reference of Garceran et al., taken either alone or in combination. The tertiary reference of Terlep et al. is not asserted to overcome the noted deficiencies of the primary and secondary references with respect to claim 1, and Applicant contends that it cannot do so. Accordingly, Applicant contends that claim 1 is patentably distinct from the cited references, taken either alone or in combination. As claim 7 includes all patentable limitations of claim 1, this claim is also believed to be allowable. Applicant thus respectfully requests reconsideration and withdrawal of the rejection under 35 U.S.C. § 103(a), and allowance of claim 7.

Claims 13-14 and 20

Claims 13-14 and 20 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Burgan et al. in view of Garceran et al. and further in view of Dupray (U.S. Publication No. 2004/0266457). Applicant respectfully traverses.

Applicant contends that it has shown claims 12 and 18 to be patentably distinct from the primary reference of Burgan et al. and the secondary reference of Garceran et al., taken either

alone or in combination. The tertiary reference of Dupray is not asserted to overcome the noted deficiencies of the primary and secondary references with respect to claims 12 and 18, and Applicant contends that it cannot. Accordingly, Applicant contends that claims 12 and 18 are patentably distinct from the cited references, taken either alone or in combination. As claims 13-14 include all patentable limitations of claim 12, and claim 20 includes all patentable limitations of claim 18, these claims are also believed to be allowable. Applicant thus respectfully requests reconsideration and withdrawal of the rejection under 35 U.S.C. § 103(a), and allowance of claims 13-14 and 20.

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CONCLUSION

In view of the above remarks, Applicant believes that all pending claims are in condition for allowance and respectfully requests a Notice of Allowance be issued in this case. Please charge any further fees deemed necessary or credit any overpayment to Deposit Account No. 08-2025.

If the Examiner has any questions or concerns regarding this application, please contact the undersigned at (612) 312-2204.

Respectfully submitted,

Date: 31 MAR 08

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